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ABSTRACT

This document contains the following "Abbott Opinions": (1) "Early Childhood Education"; (2) "Adequate School Facilities"; (3) "Supplemental Programs and Whole School Reform in Elementary Schools"; (4) "Supplemental Programs in Middle and High Schools"; and (5) "Planning Programs and Budgets in Abbott Schools." "Abbott Opinion #1" discusses clarification of the Supreme Court's specific rulings in "Abbott" on early childhood education and is designed to assist district administrators, teachers, and parents, community organizations, and others involved in formulating "Abbott" early childhood education plans. "Abbott Opinion #2" provides a thorough analysis of works such as "A Study of School Facilities and Recommendations for the Abbott Districts" by the New Jersey State Department of Education (November 1997) and "The Supreme Court's opinions in "Abbott v. Burke, particularly "Abbott V" (1998) and "Abbott IV" (1997). "Abbott Opinion #3" was designed to assist district administrators, teachers, community organizations, parents, and others in planning their curriculum, budget, and facilities--including their early childhood education plans and Five-Year Facilities Management plans--under "Abbott." The fourth "Abbott Opinion" reflects on thorough reading and careful analysis of the Supreme Court's rulings on supplemental programs in middle and high schools. "Abbott Opinion #5" discusses the requirements for planning programs and budgets in Abbott schools and analyzes the Supreme Court's rulings on this subject. (SLD)

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Abbott Opinions #1-5

1. Early Childhood Education
2. Adequate School Facilities
3. Supplemental Programs and Whole School Reform in Elementary Schools
4. Supplemental Programs in Middle and High Schools
5. Planning Programs and Budgets in Abbott Schools

Education Law Center
New Jersey

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REVISED October 23, 1998

ABBOTT OPINION # 1
Early Childhood Education

The Abbott districts are now preparing plans for early childhood education programs to comply with the decisions in Abbott v. Burke. The Department of Education's Abbott regulations, issued in July 1998, set November 2, 1998 as the deadline for the submission of plans. However, these regulations provide the districts with little guidance on how to fulfill their responsibility for early childhood education under Abbott.

As counsel for the Abbott children, we have prepared this Opinion to clarify the Supreme Court's specific rulings in Abbott on early childhood education. It is designed to assist district administrators, teachers, parents, community organizations and others involved in formulating Abbott early childhood education plans. The Opinion reflects our thorough reading and careful analysis of the following:

* The Supreme Court's opinions in Abbott v. Burke, particularly Abbott V, 153 N.J. 480 (1998), and Abbott IV, 149 N.J. 119 (1997);

* Report and Decision of the Remand Court (Judge Michael Patrick King), Appendix I to Abbott V, 153 N.J. 480, 529 (Jan. 22, 1998);

* Recommendations for Resolving New Jersey *Abbott v. Burke IV*, after the November and December 1997 Hearings, Allan Odden, Appendix II to Abbott V, 153 N.J. 480, 637 (Dec. 30, 1997); and

* A Study of Supplemental Programs and Recommendations for the Abbott Districts, New Jersey State Department of Education (November 1997).

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QUESTIONS ADDRESSED:

1. Which children have a right to early childhood education?

2. Why does Abbott require early childhood education programs?

3. What is the minimum preschool program mandated by Abbott?

4. Must Abbott districts offer more than a half-day program if their children need it?

5. How should Abbott districts decide whether to offer a half-day or a full- or extended-day or year program?

6. Does Abbott V specify the requirements for all programs, whether a half-day or more?

    a. Does Abbott require high quality programs?
    b. Does Abbott require early childhood education to be linked to whole school reform?
    c. Does Abbott require instruction by certified teachers?
    d. Does Abbott require small classes?
    e. Does Abbott require transportation, health, and other services?
    f. Does Abbott require adequate facilities?

7. Does Abbott require the State to provide adequate funding?

8. Can community-based providers receive Abbott funding to expand and, where needed, upgrade their early education programs?

9. What are the deadlines for implementing Abbott early childhood education?

10. What is the standard of review of Abbott district plans by the Commissioner?

11. Can a district appeal if the Commissioner rejects its plan?

12. Can the Supreme Court be asked to intervene directly to resolve disputes?

1. Which children have a right to early childhood education?

Abbott mandates "intensive" education programs for all three and four year old children in the poorer urban (Abbott or Special Needs) districts so that these children are "education-ready" when they enter kindergarten. For urban children, Abbott includes intensive early education, beginning at age three, as a part of their right to a thorough and efficient education under our state constitution.

2. Why does Abbott require early childhood education programs?

The Supreme Court gives several reasons for ordering early education programs for urban children: (1) "the earlier education begins, the greater the likelihood that students will develop language skills and the discipline necessary to succeed in school;" (2) "one-third of children entering elementary school lack basic school-readiness skills;" (3) "children in low income families suffer greatly in language development;" (4) opportunities for poor children to develop language skills "are lost" if early education does not begin at ages three and four; and (5) "poor areas suffer from a scarcity of quality, publicly-funded early care and early education for three- to five-year olds."

3. What is the minimum preschool program mandated by Abbott?

The Supreme Court directs the Abbott districts to provide "well-planned, high quality" half-day education programs for all three- and four- year old children as an "initial reform" or minimum program.

4. Must Abbott districts offer more than a half-day program if their children need it?

Yes. The Court said that half-day preschool programs are acceptable only as "an initial reform." Ultimately, the Abbott preschool program for each district must serve the "particularized needs" of its children. If the actual children in an Abbott district require more than the minimum half-day program to meet their "particularized needs," the district must provide more. The Supreme Court, therefore, directs the Abbott districts to provide full- or extended- day programs or year-round programs to their three and four year old children if necessary "to reverse the educational disadvantages" of those children.

According to the Supreme Court, once a district "demonstrates the need for programs beyond those recommended by the Commissioner" – the minimum half-day program – the Commissioner is required to "approve such requests and, when necessary, shall seek appropriations to ensure the funding and resources necessary for their implementation."

5. How should Abbott districts decide whether to offer a half-day or a full- or extended-day or year program?

To comply with Abbott, each Abbott district must conduct a comprehensive assessment of the needs of its own children for early education. The Supreme Court stresses the importance of having "the particularized needs of these children drive the determination of what programs should be developed." The only way a district can determine what program to offer its children is to conduct a thorough assessment of the "particularized needs" of these children. With this information and data, each district can then decide whether to offer its children the minimum half-day program or, instead, to provide a full- or extended-day program, and/or a program that operates year-round.

In July 1998, twenty-two of the twenty-eight Abbott districts formed a Consortium with the Center for Early Education at Rutgers to undertake a comprehensive assessment of the need for early education programs under Abbott. The Consortium was formed as a way of making sure the Abbott districts fulfilled their responsibility under Abbott to develop their preschool programs based on the "particularized needs" of their children.

6. Does Abbott V specify the requirements for all programs, whether half-day or more?

Yes. Whether a district offers the minimum half-day program, or a full- or extended-day or year program, all programs must meet certain indicators of quality established by the Supreme Court.

a. Does Abbott require high quality programs?

Yes. Abbott requires high quality early education programs. In all of the Abbott decisions, the Court emphasizes that "well planned, high quality" and "intensive" preschool programs are needed to "reverse the educational disadvantages" of poor children. The May 1998 ruling gives even more detail about the type of programs that the Court wants in Abbott districts. The Court cites: (1) Dr. Robert Slavin's opinion that "the programs that have shown the greatest success are ones that provide more intensive services...;" (2) the High/Scope Perry Preschool and Abecedarian studies' showing of "a strong correlation between the intensity and duration of pre-school and later educational progress and achievement;" (3) the Carnegie Report's recommendation of "high quality learning opportunities" for three and four year old children; and (4) the New Jersey Goodstarts program's demonstration of the educational "value" of full-day preschool programs.

The specific preschool programs cited in Abbott, such as Goodstarts, are all high quality, intense programs that have rigorous standards for a "developmentally appropriate" curriculum, staff certification and training, professional development and other essential program components. These programs also provide nutrition, health,

parent involvement and other related programs. To comply with Abbott, preschool programs must have standards similar to Goodstarts, Perry Preschool and other comparable programs in order to satisfy the Court's mandate for "high quality."

b. Does Abbott require early childhood education to be linked to whole school reform?

Yes. In addition to early education, Abbott requires whole school reform, as proposed by the Commissioner. His proposal includes the "Success for All" program as the presumptive model but also allows districts to use other instructional improvement models. Whole school reform must be implemented in all Abbott elementary schools over the next three years. Success for All, developed by Dr. Robert Slavin, has its own reading, writing, language arts, science and mathematics curriculum, and teachers are specially trained to use this curriculum and other specific instructional methods. Success for All begins in kindergarten.

Abbott mandates that early education be an "integral component" of whole school reform. According to the Court, the objective of early education is the "year-by-year" improvement of language, discipline and other skills so that children are "education ready" to take full advantage of whole school reform when they enter kindergarten. Under Abbott, the Abbott districts must make certain that the preschool curriculum and instructional program are directly linked to the instructional improvement program and the whole school reform required for the primary grades.

c. Does Abbott require instruction by certified teachers?

Yes. Although Abbott does not address this question directly, the Supreme Court gives clear guidance on this issue. The programs cited by the Court as examples of high quality, such as Goodstarts and Perry Preschool, require instruction by certified teachers. The Commissioner's proposed preschool program -- the basis for the Court's "initial" early childhood education remedy -- includes teachers working directly in Abbott (public) schools at public school salary levels. Abbott requires preschool teachers who are well-trained and able to receive additional training with elementary school teachers to assure curricular and instructional alignment from preschool through the early grades. However, Abbott districts using community-based providers must carefully consider the qualifications and status of current, non-certified teaching personnel.

d. Does Abbott require small classes?

Yes. The Supreme Court adopts the Commissioner's preschool program which is based upon a maximum class size of fifteen children per classroom, with one teacher and one assistant teacher for each class.

e. Does Abbott require transportation, health and other services?

Yes. The Commissioner's preschool program encompasses a wide array of services – "instructional, medical, dental, parent involvement and training, etc." – to "close the gap between the home and school environments and the educational expectations that lead to academic success." In accepting this program, the Supreme Court directs the Commissioner to "assist" the Abbott districts "in meeting the need for transportation and other services, support, and resources related to [quality pre-school] programs."

f. Does Abbott require adequate facilities?

Yes. The Supreme Court includes preschool in its order requiring the State to eliminate overcrowding and code violations and to provide adequate facilities in the Abbott districts. The Abbott districts are required to determine the need for adequate preschool classrooms -- at a class size of no more than 15 children -- and other essential spaces for preschool programs in their Five-Year Facilities Management Plans. In addition, the Court accepted the Commissioner's commitment "to prioritize construction projects that will facilitate the full implementation of early childhood programs" in the state-funded construction program that must begin in the Abbott districts by Spring 2000. Finally, the Court accepted the Commissioner's representation that the State "is prepared to move immediately to ensure the availability of adequate temporary facilities" to implement preschool "in all Abbott schools by the beginning of the 1999-2000 school year." Any temporary facilities "should be in buildings free of Code violations, should be at least 600 square feet, and should contain toilet rooms visible to the teacher."

7. Does Abbott require the State to provide adequate funding?

Yes. Without a district-by-district needs assessment, the Supreme Court could not determine how much additional funding would be required to provide early childhood programs in the Abbott districts. However, the Court recognizes that "funding remains a critical element" in implementing these programs. Under Abbott, the State must ensure that each Abbott district has the funding necessary for quality, intensive preschool programs that meet the particularized needs of its children, whether provided by the district itself or through collaborative agreements with community-based providers. The Court accepted the Commissioner's commitment that if an Abbott district needs "additional funds" – Early Childhood Program Aid or funding for temporary and permanent facilities – the Commissioner will provide and secure the "needed funds" by seeking supplemental appropriations from the Legislature.

8. Can community-based providers receive Abbott funding to expand and, where needed, upgrade existing early childhood education programs?

Yes. Abbott districts have the primary responsibility to assure the provision of early education under Abbott. To meet this responsibility, districts may cooperate

with or use existing early childhood and day care programs in the community. In considering collaboration, the Abbott districts must evaluate community-based programs carefully to determine whether these programs currently meet, or can meet, the standards of quality for early education established by the Supreme Court and discussed in Question 6(a)-(f) above. Abbott district plans may also include requests to the Commissioner for additional funding and facilities on behalf of community-based programs if such programs need more resources to satisfy the quality standards established in Abbott.

9. What are the deadlines for implementing Abbott early childhood education?

The Supreme Court established September 1999 as the deadline by which the Abbott districts must offer high quality early education programs for all three and four year old children. The Commissioner has set November 2, 1998 as the date for the Abbott districts to submit an early childhood plan for his review.

Any relaxation of the September 1999 deadline must be approved by the Supreme Court. If the Abbott districts need more time to implement the high-quality early education required by the Court, Education Law Center, as counsel for the Abbott children, would join with the Commissioner in seeking appropriate extensions.

10. What is the standard of review of Abbott district plans by the Commissioner?

Under Abbott, the Commissioner reviews the plans for early education submitted by the Abbott districts. Although the Court requires each district to demonstrate in its plan the particularized need for its program, the Commissioner must review these plans with "deference" because "local educators are in the best position to know the particularized needs of their own students." Under Abbott, therefore, the Commissioner's review is limited and deferential, and he cannot arbitrarily override the decisions made by the Abbott districts, provided those decisions are needs-based.

11. Can a district appeal if the Commissioner rejects its plan?

Yes. The Supreme Court anticipates that disputes may arise between the Commissioner and the Abbott districts in implementing early education and the other Abbott reforms. As the Court states, these disputes "will involve issues arising from the implementation, extension, or modification of existing programs, the need for additional supplemental programs, the allocation of budgeted funds, the need for additional funding, and the implementation of the standards and plans for the provision of capital improvements and related educational facilities."

The Supreme Court has designated these Abbott disputes as "controversies" under the School Laws. The district must, first, file an appeal with the Commissioner and seek to have the dispute resolved by an Administrative Law Judge. The Law

Judge would conduct a hearing in which the Commissioner would be required to defend his decision to override the needs-based decisions of Abbott school officials. A decision can then be appealed directly to the Appellate Division and then to the Supreme Court. As the Court states in Abbott V, "[i]n this way, districts and individual schools will be accorded full administrative and judicial protection in seeking the demonstrably-needed programs, facilities, and funding necessary to provide the level of education required by... the Constitution."

12. Can the Supreme Court be asked to intervene directly to resolve disputes?

Education Law Center will continue to make every effort to work closely with State officials to help them to anticipate and solve problems with implementation of Abbott early education. ELC, on behalf of the Abbott children -- can utilize a procedure – a Motion in Aid to Litigants' Rights – to ask the Supreme Court to address disputes over State policies that cannot be resolved through administrative or legislative action. The Supreme Court indicates that it "remains cognizant of the interests of the parties, particularly those of plaintiffs who speak for and represent the at-risk children of the special needs districts." According to the Court, "[t]he lessons of the history of the struggle to bring these children a thorough and efficient education render it essential that their interests remain prominent, paramount, and fully protected."

Abbott Opinions are written and distributed by the Education Law Center on specific issues pertaining to Abbott v. Burke. This Opinion is part of ELC's on-going effort to assure effective and full implementation of the remedies ordered by the Supreme Court.

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October 15, 1998

ABBOTT OPINION # 2
Adequate School Facilities

The Abbott districts are preparing Five-Year Facilities Management Plans, as ordered by the Supreme Court in Abbott v. Burke. The Court set January 15, 1999 as the deadline for submission of these Plans to the Department of Education (DOE). However, the regulations and guidelines issued by the DOE are confusing and sometimes conflict with the directives in Abbott.

As counsel for the Abbott children, we have prepared this Opinion to clarify the Supreme Court's specific rulings on facilities improvements. It is designed to assist district administrators and their architects, teachers, parents, community organizations and others involved in formulating their Five-Year Facilities Management Plans under Abbott. The Opinion reflects our thorough reading and careful analysis of the following:

- The Supreme Court's opinions in Abbott v. Burke, particularly Abbott V, 153 N.J. 480 (1998), and Abbott IV, 149 N.J. 119 (1997);
- Report and Decision of the Remand Court (Judge Michael Patrick King), Appendix I to Abbott V, 153 N.J. 480, 529 (Jan. 22, 1998);
- Recommendations for Resolving New Jersey Abbott v. Burke IV, after the November and December 1997 Hearings, Allan Odden, Appendix II to Abbott V, 153 N.J. 480, 637 (Dec. 30, 1997); and
- A Study of School Facilities and Recommendations for the Abbott Districts, New Jersey State Department of Education (November 1997).

QUESTIONS ADDRESSED:

1. Which children have a right to adequate school facilities under Abbott?
2. Why does Abbott mandate adequate schools?
3. What is an adequate school under Abbott?
4. Is the State obligated to provide adequate schools?
5. Did the Supreme Court order the Commissioner to study the condition of the Abbott schools?
6. Did the Supreme Court order the Abbott Districts to do Facilities Plans?
7. What facilities needs must be addressed in the Facilities Plans?
8. Did the Supreme Court adopt any specific school design or model?
9. What improvements are required in the Facilities Plans?
10. Does Abbott require districts to restructure the school day or year to cut facilities improvement costs?
11. Does Abbott require adequate facilities for early childhood programs?
12. Does Abbott require the State to provide full funding for facilities improvements?
13. Does Abbott set a dollar limit on facilities improvements?
14. Did the Supreme Court accept the Commissioner's recommendation for State management of facilities improvements?
15. Does Abbott set deadlines for action?
16. What happens after the Abbott districts submit their Facilities Plans?
17. Can a district appeal if the Commissioner rejects its plan?
18. Can the Supreme Court be asked to intervene directly to resolve disputes?

1. Which children have a right to adequate school facilities under Abbott?

Under Abbott, children in the poorer urban (Abbott or Special Needs) districts must be educated in schools that are physically and educationally adequate. For urban children, Abbott includes "adequate physical facilities" as "an essential component" of their right to a thorough and efficient education under our state constitution.

2. Why does Abbott mandate adequate schools?

The Supreme Court gives several reasons for requiring adequate schools in Abbott districts: (1) schools in Abbott districts are "dilapidated, unsafe, and overcrowded;" (2) the "decrepit and dangerous conditions" found in these schools make it difficult for children to learn at high standards; (3) most schools "lack library/media centers, are deficient in physical facilities for science, and cannot provide sufficient space or appropriate settings for arts programs;" (4) most schools "lack adequate physical-education space and equipment;" (5) there is "no space" available to reduce class size, or for alternative programs, music and art instruction, and science laboratories; and (6) the State's core curriculum content standards "will only increase the need for capital expenditures to improve and to augment physical facilities."

3. What is an adequate school under Abbott?

The Supreme Court mandates that all school buildings meet three basic criteria. Schools must (1) be safe, in good repair, and in compliance with fire, health and construction codes; (2) provide instruction in appropriately-sized classes and not in overcrowded classrooms; and (3) contain all spaces necessary to provide a rigorous curriculum based on the State's content standards (library, gym, auditorium, art and music rooms, science labs, etc.), special education programs, and needed supplemental programs (early childhood education programs, small reading classes, alternative education, parent involvement programs, etc.).

4. Is the State obligated to provide adequate schools?

Yes. The Supreme Court has recognized that the Abbott districts "are property-poor districts that had a poor bond rating" and "were unable to finance needed [school] construction." Therefore, it places the responsibility to provide adequate school buildings squarely upon the State, and not the Abbott districts. The Supreme Court has firmly ruled that the State is constitutionally obligated to "provide facilities for children in the special needs districts that will be sufficient to enable those students to achieve the substantive [content] standards that now define a thorough and efficient education."

5. Did the Supreme Court order the Commissioner to study the condition of the Abbott schools?

Yes. In the 1997 Abbott IV decision, the Supreme Court ordered the Commissioner to "review the facilities needs" of the Abbott districts and "provide recommendations" to the Court on "how the State should address those needs." In November 1997, the Commissioner submitted his study of the Abbott district schools to the Court. Due to time constraints, the Commissioner studied the 429 existing Abbott schools only for code violations and for current classroom overcrowding. The Commissioner did not assess whether the school buildings had adequate libraries, gyms, laboratories and other spaces required for the subjects under the content standards, special education programs, and needed supplemental programs.

6. Did the Supreme Court order the Abbott Districts to do Facilities Plans?

Yes. The Court ruled that each Abbott district must complete the assessment of their existing schools and future building needs in a comprehensive and district-specific manner, based upon the "particularized needs of their own students." This district-specific study is called a "Five-Year Facilities Management Plan" and must be completed by each Abbott district by January 15, 1999.

7. What facilities needs must be addressed in the Facilities Plans?

The Court-ordered Facilities Plans must address several critical items: (a) the need for repairs to make all schools safe and in compliance with applicable construction codes; (b) additional classrooms to accommodate current and future enrollment; (c) the "particularized need" for specialized instructional and other spaces required to provide a standards-based curriculum, special education programs and needed supplemental programs; (d) the need for temporary and permanent facilities for early childhood programs; and (e) "the site-sensitive decision of whether it is more feasible to renovate existing buildings or to construct new ones." The Plans must be driven by "each district's individualized need" and not be constrained by the Commissioner's "minimum standards."

8. Did the Supreme Court adopt any specific school design or model?

No. The Supreme Court did not adopt any specific school design or model that all Abbott districts must use in their Facilities Plans. The Court did accept the Commissioner's study of code violations and current classroom overcrowding. The Court also accepted the "minimum standards for instructional areas" recommended by the Commissioner. However, the Court did not adopt any specific school design or model, such as the "model school prototypes" that the Commissioner submitted to the Legislature in Spring 1998 as part of a legislative proposal to revise the State's funding formula for debt service aid.

Instead of prescribing a "one size fits all" school design or model, the

Supreme Court directed each Abbott district (a) to perform a complete assessment of facilities needs, and (b) to develop design standards for schools "that are educationally adequate to permit Abbott children to reach the CCCS [core curriculum content standards] and that contain all of "the spaces necessary to house Abbott students adequately." This mandate means that each district must determine its own design standards for elementary, rniddle and high schools based on the "particularized needs" of its students, and not on any fixed model developed by the State.

9. What improvements are required in the Facilities Plans?

The Court-ordered Facilities Plans must contain a comprehensive strategy to make every Abbott school physically and educationally adequate within five years, by renovating existing schools and/or by building new schools. This improvement strategy must include several components:

(a) all "defects" in structural, electrical, plumbing, heating, fire protection and other systems "must be the first" to be corrected, with priority given to fixing electrical power and distribution systems since these systems enhance building safety and allow for "implementation of the State's technology plan";

(b) current and future overcrowding must be eliminated by adding as many classrooms as are needed to reduce class sizes to 15 children in preschool, 21 children in kindergarten to third grade, 23 children in grades four through eight, and 24 students in high school; and

(c) schools must contain all of the spaces and rooms that "local educators" determine are necessary for a rigorous, standards-based curriculum, special education programs and supplemental needed programs to meet the "particularized needs" of their own students, including spaces for art, music, sciences, physical education and technology at all grade levels.

10. Does Abbott require districts to restructure the school day or year to cut facilities improvement costs?

No. The Supreme Court does not require Abbott districts to reduce the cost of facilities improvements by resorting to practices such as year-round schooling, split sessions or distance learning. The Court did accept the Commissioner's recommendation that the Abbott districts should review "grade configurations, school sending areas, school sizes, and ... individualized need for instructional space." However, Abbott requires districts to evaluate such issues on the basis of whether they serve the "particularized needs of their own students," and not simply on the basis of cost-savings.

11. Does Abbott require adequate facilities for early childhood programs?

Yes. Abbott mandates early childhood education for all three and four year old children in the Abbott districts. These programs must be implemented by September 1999. Abbott requires the districts to include in their Facilities Plans the temporary and permanent facilities needed to provide these programs. Abbott requires the districts to prioritize permanent construction projects for early childhood programs in their Plans. In addition, "while awaiting the construction or renovation of the necessary facilities," Abbott mandates the Commissioner to provide funding and assistance to the Abbott districts to "make use of trailers, rental space, or cooperative enterprises with the private sector" in order to have temporary facilities in place to meet the September 1999 deadline for implementing early childhood programs. However, any temporary facilities "should be in buildings free of Code violations, should be at least 600 square feet, and should contain toilet rooms visible to the teacher."

12. Does Abbott require the State to provide full funding for facilities improvements?

Yes. The Supreme Court accepted the Commissioner's recommendation that "the State fund 100%" of the needed facilities improvements in each Abbott district. The Court also directed the State to implement a funding formula that covers "the complete cost" of correcting all of the "infrastructure and life cycle deficiencies that have been identified in the Abbott districts" and of constructing the "new classrooms needed to correct capacity deficiencies."

13. Does Abbott set a dollar limit on facilities improvements?

No. The Supreme Court makes it clear that any "projected cost estimates" of the facilities improvements for the Abbott districts "are speculative at best," at least until the districts complete their Facilities Plans. Accordingly, the Court "decline[d] to impose dollar restrictions." Instead, Abbott mandates that the State provide all of the funding needed to "house Abbott students adequately," in accordance with the districts' Facilities Plans.

14. Did the Supreme Court accept the Commissioner's recommendation for State management of facilities improvements?

Yes. The Supreme Court accepted the Commissioner's proposal to centralize funding and construction management of facilities improvement projects in Abbott districts at the state level. The Court-accepted proposal would designate a single state agency to secure financing and manage the construction and renovation projects contained in the Abbott districts' Facilities Plans. This new State building program will require legislative action.

15. Does Abbott set deadlines for action?

The Supreme Court accepted a schedule for action proposed by the Commissioner: Facilities Plans must be completed by each Abbott district by January 1999; architectural blueprints for construction projects must be completed by Fall 1999; and construction projects must begin by Spring 2000.

16. What happens after the Abbott districts submit their Facilities Plans?

The Commissioner will review each district's Facilities Plan. However, Abbott requires the Commissioner to review the district Plans with deference and "with the understanding that the local educators are in the best position to know the particularized needs of their own students." If the Abbott districts demonstrate the need for facilities improvements in their Plans, the Commissioner is obligated to "secure or provide the necessary funds" to complete the improvements.

17. Can a district appeal if the Commissioner rejects its plan?

Yes. The Supreme Court "expect[s]" that the Commissioner "will follow through in good faith" with the Facilities Plans. However, the Court also makes clear that the Abbott districts "have the authority to challenge" the Commissioner should he default on the "commitment to provide facilities that are educationally adequate to permit Abbott children to reach the CCCS [content standards]." The Court also anticipates that disputes may arise between the Commissioner and the Abbott districts in implementing the Abbott facilities remedy. These disputes "will involve issues arising from the... implementation of the standards and plans for the provision of capital improvements and related educational facilities."

The Supreme Court has designated these Abbott disputes as "controversies" under the School Laws. The district must, first, file an appeal with the Commissioner and seek to have the dispute resolved by an Administrative Law Judge. The Law Judge would conduct a hearing in which the Commissioner would be required to defend his decision to override the needs-based decisions of Abbott school officials. A decision can then be appealed directly to the Appellate Division and then to the Supreme Court. As the Court states in Abbott V, "[i]n this way, districts and individual schools will be accorded full administrative and judicial protection in seeking the demonstrably-needed programs, facilities, and funding necessary to provide the level of education required by... the Constitution."

18. Can the Supreme Court be asked to intervene directly to resolve disputes?

Education Law Center will continue to make every effort to work closely with State officials to help them to anticipate and solve problems with implementation of

Abbott facilities improvements. ELC, on behalf of the Abbott children, can utilize a procedure – a Motion in Aid to Litigants' Rights – to ask the Supreme Court to address disputes over State policies that cannot be resolved through administrative or legislative action. The Supreme Court indicates that it "remains cognizant of the interests of the parties, particularly those of plaintiffs who speak for and represent the at-risk children of the special needs districts." According to the Court, "[t]he lessons of the history of the struggle to bring these children a thorough and efficient education render it essential that their interests remain prominent, paramount, and fully protected."

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November 4, 1998

ABBOTT OPINION # 3

SUPPLEMENTAL PROGRAMS AND WHOLE SCHOOL REFORM IN ELEMENTARY SCHOOLS

As counsel for the Abbott children, we have prepared this Opinion to clarify the Supreme Court's specific rulings on supplemental programs. It is designed to assist district administrators, teachers, parents, community organizations, and others involved in planning their curriculum, budget, and facilities -- including their early childhood education plans and Five-Year Facilities Management plans -- under Abbott. The Opinion reflects our thorough reading and careful analysis of the following:

- The Supreme Court's opinions in Abbott v. Burke, particularly Abbott V, 153 N.J. 480 (1998), and Abbott IV, 149 N.J. 119 (1997);
- Report and Decision of the Remand Court (Judge Michael Patrick King), Appendix I to Abbott V, 153 N.J. 480, 529 (Jan. 22, 1998);
- Recommendations for Resolving New Jersey Abbott v. Burke IV, after the November and December 1997 Hearings, Allan Odden, Appendix II to Abbott V, 153 N.J. 480, 637 (Dec. 30, 1997); and
- A Study of Supplemental Programs and Recommendations for the Abbott Districts, New Jersey State Department of Education (November 1997).

QUESTIONS ADDRESSED

1. How does the Supreme Court define a "thorough and efficient" education for Abbott students?

2. What rights does the Supreme Court establish so that Abbott students receive a thorough and efficient education?

3. What are the requirements for regular education in Abbott elementary schools?

4. Why are supplemental programs required in Abbott elementary schools?

5. Did the Supreme Court order the Commissioner to study the need for supplemental programs?

6. Did the Supreme Court order a specific set of supplemental programs in Abbott elementary schools?

7. What is "whole school reform" under Abbott?

8. What is the minimum instructional improvement program required for all Abbott elementary schools?

9. What are the minimum supplemental programs required for all Abbott elementary schools?

10. Does Abbott require more intensive supplemental programs, if needed?

11. Does Abbott require additional supplemental programs, if needed?

12. How should Abbott elementary schools decide whether to offer the minimum supplemental programs or more?

13. What school management changes does Abbott require?

14. Does Abbott require the State to fund all needed supplemental programs?

15. Does Abbott require schools to reallocate funds from existing programs to pay for needed supplemental programs?

16. What happens when a district requests extra funding?

17. Can a district appeal if the Commissioner denies its request?

18. Can the Supreme Court be asked to intervene directly to resolve disputes?

1. How does the Supreme Court define a "thorough and efficient" education for Abbott students?

The New Jersey Constitution requires that every child receive a "thorough and efficient" education. For students in poorer urban (Abbott or Special Needs) districts, the Supreme Court defines this education as one that will prepare these (Abbott) students to compete effectively in the economy and become successful citizens and members of their communities.

2. What rights does the Supreme Court establish so that Abbott students receive a thorough and efficient education?

Abbott students have three basic rights:

A. Rigorous curriculum and instruction (regular education)

Abbott students have a right to rigorous curriculum and instruction in all subject areas covered in the State Core Curriculum Content Standards. The curriculum must also be modeled after the high quality programs offered in successful suburban schools. This curriculum and instruction is commonly called "regular education." It is also called "standards-based education" or the "foundational education program."

B. Supplemental programs

Abbott students also have a right to extra or additional programs that help them overcome the extreme disadvantages of growing up in urban poverty. These programs are commonly called "supplemental programs."

C. Adequate school facilities

Abbott students have a right to safe and educationally adequate facilities that comply with health, safety, and building codes; eliminate overcrowding; and contain sufficient space to deliver both a rigorous curriculum (regular education) and all needed supplemental programs.

3. What are the requirements for regular education in Abbott elementary schools?

Every Abbott elementary school must provide rigorous curriculum and instruction in all subjects covered in the State content standards. These subjects are language arts (reading, writing and literature), mathematics, science, social studies, world languages, the arts (visual and performing) and comprehensive health and physical education. Technology must be included throughout the entire curriculum. Instruction must stress critical thinking, decision making and problem solving skills.

Each school must have enough general and specialized teachers, supervisors, student and other support services to offer this curriculum to every student, including students with disabilities and students with limited English proficiency. Abbott schools must model their curriculum on the programs in successful suburban schools, and on their own research, experience and best practices.

In 1997, the Supreme Court ordered the State to increase funding for regular education in the Abbott districts to an amount equal to spending in successful suburban schools. This is commonly called funding "at parity." Parity funding must be used to support a rigorous curriculum in all Abbott schools. In 1998-99, the per-pupil amount of funding at parity is $8800. Abbott mandates that parity funding continue indefinitely.

4. Why are supplemental programs required in Abbott elementary schools?

The Supreme Court gives several reasons why Abbott students need supplemental programs: (1) obstacles to a thorough and efficient education exist "not only in the schools themselves, but also in the neighborhoods and family conditions of poor urban children"; (2) "drug abuse, crime, hunger, poor health, illness and unstable family situations" are "significant barrier[s]" to education; (3) economic and racial isolation also foster student disadvantage; (4) when urban children start school, they may be two years behind suburban children; (5) achievement gaps increase as "urban students move through the educational system without receiving special attention"; (6) urban children have needs "beyond" those of suburban children, arising from "an environment of violence, poverty, and despair." Supplemental programs are "a fundamental prerequisite" to give Abbott students "a fair chance" for academic success.

5. Did the Supreme Court order the Commissioner to study the need for supplemental programs?

Yes. In 1997, the Supreme Court ordered the Commissioner to identify the special needs of Abbott students and to recommend supplemental programs to address those needs. The Commissioner's study, submitted in November 1997, reviewed national research and recommended several programs. The study did not assess the needs of actual students in the Abbott districts to determine the specific type and intensity of programs to provide in each district.

6. Did the Supreme Court order a specific set of supplemental programs in Abbott elementary schools?

Yes. The Commissioner recommended a package of supplemental programs consisting of three components: (1) an instructional improvement program, with Johns Hopkins's Success for All as the presumptive model, (2) other specific supplemental programs, and (3) changes in school management. The Supreme Court accepted these recommendations, but only as a starting point. At a minimum, every Abbott elementary school must contain each of these three components.

The Supreme Court also requires Abbott elementary schools to provide more than the Commissioner's minimum programs, if needed by the students in the school. So, if students need more intensive programs than those recommended by the Commissioner -- or programs that the Commissioner did not recommend at all -- their school and district must provide them. The Court emphasizes that "the provision of supplemental programs involving necessary services should not be detached from the actual needs of individual Abbott schools or districts."

7. What is "whole school reform" under Abbott?

"Whole school reform" is a term used in different and often confusing ways. Sometimes it is used to describe Johns Hopkins' Success for All program or other school improvement programs. It is also been used to refer to changes in school management or to the Commissioner's recommended supplemental programs.

Under Abbott, "whole school reform" has a specific meaning. It refers to the overall effort by parents, teachers and principal of a school to "integrat[e] reform throughout the school as a total institution." It is the "coherent and concerted process" that each Abbott elementary school must undertake to combine a rigorous curriculum in all of the subject areas (regular education) with all required supplemental programs into an effective "whole school" package that meets the needs of all students.

8. What is the minimum instructional improvement program required for all Abbott elementary schools?

Every Abbott elementary school must have a program to improve the quality of instruction in all subjects. This instructional program must include the following minimum components:

A. Instructional facilitator

Each school must have a full-time facilitator, to provide leadership in implementing the school's instructional improvement program. The facilitator will be responsible for keeping up with educational research, planning the program, and assisting and advising teachers at the classroom level. The facilitator is also part of the school's family support team.

B. Coordination with preschool curriculum

Abbott requires high quality preschool for all 3 and 4 year old children. Each elementary school must work directly with the district's preschool programs to integrate their curriculum and instruction with its instructional improvement program.

C. Intensive reading instruction

Each school must have enough trained teachers to provide reading instruction in groups of no more than 15 students, for at least 90 minutes per day. Abbott requires each school to make an intensive effort to improve reading skills so that all students are reading at grade level by the third grade.

D. Professional development

Each school must have professional development for teachers that is "continuous, focuses on student achievement of the [content standards], and is based on ongoing professional renewal." At a minimum, the school must provide six staff development days each school year, as well as three days of training for teachers before the school year. Professional development also includes the specific training package for Success for All or other alternative programs adopted by the school.

E. Curriculum reform

Each school must have "well-designed textbooks, alignment, and instructional group and classroom activities," based upon the State content standards in all subject areas. These resources must include the curriculum development and materials required by Success for All or other alternative programs adopted by the school.

9. What are the minimum supplemental programs required for all Abbott elementary schools?

Every Abbott elementary school must have the following supplemental programs, at the minimum level recommended by the Commissioner:

A. Quality full-day kindergarten

Each school must provide "well-planned, developmentally appropriate" full-day kindergarten programs for five-year-olds. Because of the "acute" need for this program, it must be implemented "immediately."

B. Family support team (social and health services)

Each school must have a family support team to meet the "pervasive and urgent" need of students for social and health services. At a minimum, the family support team includes a full-time school social worker, school nurse, the instructional facilitator, parent liaison, and school counselor. This team is responsible for intervening "to solve behavioral, nutritional, attendance and other problems" and for making referrals to health and human services as necessary.

To meet this requirement, elementary schools of 500 K-5 and 84 preschool students must have a full-time social worker, school nurse and school counselor on-site. Schools with greater enrollments will require more staff to meet student need.

C. Parent involvement programs

Each school must have a full-time parent liaison to promote effective parent participation in school management, develop programs for parents and provide other opportunities for parent involvement. The parent liaison is also part of the family support team.

D. Instructional technology

Each school must have one computer for every five students, beginning in kindergarten. Each school must also have two full-time media/technology specialists, one "to ensure that school and classroom libraries have appropriate materials to supplement the curriculum," and one "to facilitate the implementation and use of educational technology throughout the school."

E. Security

Each school must have one full-time security guard for every 535 students. Elementary schools with larger enrollments will require more staff to meet student need.

10. Does Abbott require more intensive supplemental programs, if needed?

Yes. Under Abbott, "the particularized needs" of the students must "drive the determination of what programs should be developed" by Abbott elementary schools and districts. Abbott therefore mandates each school and district to decide what level of supplemental programs are needed to serve its own students. If a school's students need a supplemental program at a more intense level, the school and district must demonstrate those needs to the Commissioner. Once the need for more intensive programs has been demonstrated, the Commissioner must authorize those programs and provide all of the funding necessary to implement them.

Abbott recognizes that the particularized needs of students might well require more intensity than the minimum programs offer. So, for example, if students in a given elementary school need social and health services to be located on-site, the school and district must demonstrate the need for on-site services to the Commissioner. The Commissioner, in turn, must approve the program and provide adequate funding for the school to implement the needed services.

11. Does Abbott require additional supplemental programs, if needed?

Yes. The Supreme Court requires Abbott elementary schools and districts to provide supplemental programs in addition to those specific programs recommended by the Commissioner. Here again, if students in a given school need a particular program not included in the minimum package mandated for all schools under Abbott, the school and district must demonstrate the need for the additional program to the Commissioner, who then must "obtain the funds necessary" to implement the program.

The Supreme Court recognized the merits of three additional supplemental programs -- summer school, after-school programs and extra nutrition. If an elementary school decides its students need these or other additional programs, the school and district must provide them, with adequate funding from the Commissioner.

12. How should Abbott elementary schools decide whether to offer the minimum supplemental programs or more?

Each Abbott elementary school and district must thoroughly assess the particularized needs of their actual students in order to identify and design programs most appropriate for them, and to decide whether the minimum programs recommended by the Commissioner are enough. Only with comprehensive information about their students can districts make the "fact-sensitive and complex" determination of "the special needs of at-risk children and the programs necessary to meet those needs."

13. What school management changes does Abbott require?

Every Abbott elementary school must implement the following changes in school management, as recommended by the Commissioner to the Supreme Court:

A. Site-based management

Each school must have its own site-based management team – comprised of teachers, administrators, and parents. Under Abbott, the main tasks of the site team are to make certain that its school has a rigorous curriculum (regular education) and all needed supplemental programs. These teams must also decide whether the students need additional programs, such as after school or summer school.

B. School-based budgeting

Each school must also prepare a yearly budget for the school's entire educational program. To develop this budget, the school must first decide what regular education and supplemental programs their students need and the cost of these programs. Next, the school must compare this cost with existing funding on hand. Last, if extra funding is required, the school and district must

request it from the Commissioner. Under Abbott, the Commissioner must provide the school with the extra funds needed to support all of the school's programs.

14. Does Abbott require the State to fund all needed supplemental programs?

Yes. The State must fully fund all supplemental programs that an Abbott elementary school and district demonstrate are needed for their students. This means that schools and districts are no longer limited to current funding levels.

15. Does Abbott require schools to reallocate funds from existing programs to pay for needed supplemental programs?

No. The Supreme Court prohibits any rollback of regular education or needed supplemental programs. Of course, each school and district must carefully review all existing programs to make sure they are effective. However, a school and district cannot reallocate funds away from any existing, effective programs. The Court states that "funds may not be withdrawn from or reallocated within the whole-school budget if that will undermine or weaken either the school's foundational education program or already existing supplemental programs."

16. What happens when a district requests extra funding?

Under Abbott, the Commissioner can review a request for extra funding from an Abbott district for needed supplemental programs. The Commissioner's review of these requests is very limited. The Commissioner must defer to the decisions of Abbott schools and districts because "local educators are in the best position to know the particularized needs of their own students." Once a school and district demonstrate the need for extra funding, the Commissioner's job is to provide the funding.

17. Can a district appeal if the Commissioner denies its request?

Yes. The Supreme Court anticipates that disputes may arise between the Commissioner and the Abbott districts in implementing supplemental programs. These disputes "will involve issues arising from the implementation, extension, or modification of existing programs, the allocation of budgeted funds, [and] the need for additional funding..."

The Supreme Court has designated these Abbott disputes as "controversies" under the School Laws. The district must, first, file an appeal with the Commissioner and seek to have the dispute resolved by an Administrative Law Judge. The Law Judge would conduct a hearing in which the Commissioner would be required to defend his decision to override the needs-based decisions of Abbott school officials. A decision can then be appealed directly to the Appellate Division and then to the Supreme Court. As the Court states, "[i]n this way, districts and individual schools will be accorded full administrative and judicial protection in seeking the demonstrably-

needed programs, facilities, and funding necessary to provide the level of education required by ... the Constitution."

18. Can the Supreme Court be asked to intervene directly to resolve disputes?

Education Law Center will continue to make every effort to work closely with State officials to help them to anticipate and solve problems with implementation of Abbott facilities improvements. ELC, on behalf of the Abbott students, can utilize a procedure – a Motion in Aid to Litigants' Rights – to ask the Supreme Court to address disputes over State policies that cannot be resolved through administrative or legislative action. According to the Court, "[t]he lessons of the history of the struggle to bring these children a thorough and efficient education render it essential that their interests remain prominent, paramount, and fully protected."

Abbott Opinions are written and distributed by Education Law Center on specific issues pertaining to Abbott v. Burke. This Opinion is part of ELC's on-going effort to assure effective and full implementation of the remedies ordered by the Supreme Court.

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November 20, 1998

ABBOTT OPINION # 4

SUPPLEMENTAL PROGRAMS IN MIDDLE AND HIGH SCHOOLS

We have prepared this Opinion to help clarify the Supreme Court's specific rulings on supplemental programs in middle and high schools in the Abbott v. Burke case. It is designed to assist district administrators, teachers, parents, community organizations, and others involved in planning curriculum, supplemental programs and budgets under Abbott. This Opinion is not the actual Supreme Court rulings, but reflects our thorough reading and careful analysis of those rulings. To prepare this Opinion, we have reviewed the following:

- The Supreme Court's opinions in Abbott v. Burke, particularly Abbott V, 153 N.J. 480 (1998), and Abbott IV, 149 N.J. 119 (1997);
- Report and Decision of the Remand Court (Judge Michael Patrick King), Appendix I to Abbott V, 153 N.J. 480, 529 (Jan. 22, 1998);
- Recommendations for Resolving New Jersey Abbott v. Burke IV, after the November and December 1997 Hearings, Allan Odden, Appendix II to Abbott V, 153 N.J. 480, 637 (Dec. 30, 1997);
- A Study of Supplemental Programs and Recommendations for the Abbott Districts, New Jersey State Department of Education (November 1997); and
- Abbott Regulations, N.J.A.C. 6:19A-1.1 - 6.5.

QUESTIONS ADDRESSED

1. How does the Supreme Court define a "thorough and efficient" education for Abbott students?

2. What rights does the Supreme Court establish so that Abbott students receive a thorough and efficient education?

3. What are the requirements for regular education in Abbott middle and high schools?

4. Why are supplemental programs required in Abbott middle and high schools?

5. Did the Supreme Court order the Commissioner to study the need for supplemental programs?

6. Does the Supreme Court require middle and high schools to adopt an instructional improvement program or model?

7. Are middle and high schools required to undertake whole school reform?

8. Did the Supreme Court order a minimum set of supplemental programs in Abbott middle and high schools?

9. Does Abbott require more intensive supplemental programs, if needed?

10. Does Abbott require additional supplemental programs, if needed?

11. How should Abbott middle and high schools decide whether to offer the minimum supplemental programs or more?

12. Does Abbott require the State to fund all needed supplemental programs?

13. Does Abbott require schools to reallocate funds and staff from existing programs, to needed supplemental programs?

14. What happens when a district requests extra funding?

15. Can a district appeal if the Commissioner denies its request?

16. Can the Supreme Court be asked to intervene directly to resolve disputes?

1. **How does the Supreme Court define a "thorough and efficient" education for Abbott students?**

The New Jersey Constitution requires that every child receive a "thorough and efficient" education. For students in poorer urban (Abbott or Special Needs) districts, the Supreme Court defines this education as one that will prepare these (Abbott) students to compete effectively in the economy and become successful citizens and members of their communities.

2. **What rights does the Supreme Court establish so that Abbott students receive a thorough and efficient education?**

Abbott students have three basic rights:

A. Rigorous curriculum and instruction (regular education)

Abbott students have a right to rigorous curriculum and instruction in all subject areas covered in the State Core Curriculum Content Standards. The curriculum must also be modeled after the high quality programs offered in successful suburban schools. This curriculum and instruction is commonly called "regular education." It is also called "standards-based education" or the "foundational education program."

B. Supplemental programs

Abbott students also have a right to extra or additional programs that help them overcome the extreme disadvantages of growing up in urban poverty. These programs are commonly called "supplemental programs."

C. Adequate school facilities

Abbott students have a right to safe and educationally adequate facilities that comply with health, safety, and building codes; eliminate overcrowding; and contain sufficient space to deliver both a rigorous curriculum (regular education) and all needed supplemental programs.

3. **What are the requirements for regular education in Abbott middle and high schools?**

Every Abbott middle and high school must provide rigorous curriculum and instruction in all subjects covered in the State content standards. These subjects are language arts (reading, writing and literature), mathematics, science, social studies, world languages, the arts (visual and performing) and comprehensive health and physical education. Technology must be included throughout the entire curriculum. Instruction must stress critical thinking, decision-making and problem-solving skills.

Each school must have enough teachers, supervisors, student and other support services to offer this curriculum to every student, including students with disabilities and students with limited English proficiency. Abbott schools must model their curriculum on the programs in successful suburban schools, and on their own research, experience and best practices.

In 1997, the Supreme Court ordered the State to increase funding for regular education in the Abbott districts to an amount equal to spending in successful suburban schools. This is commonly called funding "at parity." Abbott mandates that parity funding be used to improve curriculum and instruction under the State content standards in all Abbott schools. In 1998-99, the per-pupil amount of funding at parity is $8897 for middle school students and $9787 for high school students. Abbott mandates that parity funding continue indefinitely.

4. Why are supplemental programs required in Abbott middle and high schools?

The Supreme Court gives several reasons why Abbott students need supplemental programs: (1) obstacles to a thorough and efficient education exist "not only in the schools themselves, but also in the neighborhoods and family conditions of poor urban children"; (2) "drug abuse, crime, hunger, poor health, illness and unstable family situations" are "significant barrier[s]" to education; (3) economic and racial isolation also foster student disadvantage; (4) when urban children start school, they may be two years behind suburban children; (5) achievement gaps increase as "urban students move through the educational system without receiving special attention"; (6) urban children have needs "beyond" those of suburban children, arising from "an environment of violence, poverty, and despair." Supplemental programs are "a fundamental prerequisite" to give Abbott students "a fair chance" for academic success.

5. Did the Supreme Court order the Commissioner to study the need for supplemental programs?

Yes. In 1997, the Supreme Court ordered the Commissioner to identify the special needs of Abbott students and to recommend supplemental programs to address those needs. The Commissioner's study, submitted in November 1997, reviewed national research and recommended several programs. The study did not assess the needs of actual students in the Abbott districts to determine the specific type and intensity of programs to provide in each district.

6. Does the Supreme Court require middle and high schools to adopt an instructional improvement program or model?

No. The Supreme Court accepted the Commissioner's recommendation that each elementary school adopt a specific instructional improvement program, with Johns Hopkins' Success for All program as the presumptive model. The Commissioner, however, concluded that similarly proven instructional improvement programs or models are not yet available for middle and high schools. The Commissioner, therefore, did not recommend

any model program in middle and high schools.

The Supreme Court accepted the Commissioner's position and did not order middle and high schools to adopt an instructional improvement program or model at this time. The Court did order the Commissioner to reexamine his position in September 1999, and redetermine whether such programs or models are available for adoption.

7. Are middle and high schools required to undertake whole school reform?

No. Under Abbott, whole school reform is the process by which parents, teachers and principal "integrate" a rigorous curriculum in all subject areas (regular education) with all required supplemental programs into an effective "whole school" package. The whole school reform process is linked to the adoption of an instructional improvement program or model. Elementary schools must begin whole school reform when they start using Success for All or some other instructional improvement model. Since middle and high schools do not have to select a program or model at this time, they do not have to begin the whole school reform process yet.

However, Abbott does require all middle and high schools to improve their curriculum and instruction under the State content standards (or "standards-based reform") as a condition of receiving parity funding. Abbott emphasizes the importance of supplemental programs to the "educational success" of middle and high school students because they "will not have the benefit of whole school reform" at this time.

Further, although not required by the Supreme Court, the Commissioner has directed middle and high schools to use a site-based management team -- comprised of parents, teachers and principal. The main tasks of the site team are to make certain that its school has a rigorous curriculum (regular education) and all needed supplemental programs. These teams must also decide whether the students need additional supplemental programs, such as academic after-school and summer school programs.

8. Did the Supreme Court order a minimum set of supplemental programs in Abbott middle and high schools?

Yes. The Commissioner recommended several supplemental programs for middle and high schools. The Supreme Court accepted these recommendations, but only as a starting point. At a minimum, every Abbott middle and high school must have the following supplemental programs by the 1999-2000 school year:

A. Social and health services

Each middle school must have a community services coordinator for every 575 students. Each high school must have a community services coordinator for every 900 students. Schools with larger enrollments will require more staff. The main job of the coordinator is to identify the students' need for social and health services; locate programs in the community to meet those needs; and arrange for

those services to be provided to students through referral. Based upon this needs assessment, the coordinator must also decide whether to provide social and health services directly in the school, because such services are "not available in the surrounding community" or "cannot be effectively and efficiently" provided outside of the school. If students have a need for in-school programs and services, the coordinator must design such programs and prepare a request for additional funding.

B. Parent involvement programs

Each school must design and implement parental involvement programs that engage parents in meaningful ways linked to the goal of improving student achievement.

C. Instructional technology

Each school must have one computer for every five students. Each school must also have two full-time media/technology specialists, one "to ensure that school and classroom libraries have appropriate materials to supplement the curriculum," and one "to facilitate the implementation and use of educational technology throughout the school."

D. Security

Each school must have one full-time security guard for every 225 students. Middle and high schools with larger enrollments will require more staff to meet student need.

E. Alternative education

Each district must establish a middle school program and a high school program to serve students who have not been successful in traditional learning environments or who are disruptive. These programs should provide "more individualized instruction, as well as necessary additional supports, such as job counseling, social workers, and guidance counselors."

F. Drop-out prevention programs

Each school must have a dropout prevention specialist or counselor, whose responsibility is to help students at risk of dropping out to overcome their learning obstacles and work with the school to develop prevention strategies and programs.

G. School-to-work and college transition programs

Each school must provide school-to-work and college transition programs that "lead to increased school attendance, reduced dropout rates, higher motivation to learn, and greater likelihood of pursuing further education." These programs should

include school-based elements such as career majors, work-based learning, connecting activities such as mentoring, and career development.

9. Does Abbott require more intensive supplemental programs, if needed?

Yes. Under Abbott, "the particularized needs" of the students must "drive the determination of what programs should be developed" by Abbott middle and high schools and districts. Abbott therefore mandates each school and district to decide what level of supplemental programs are needed to serve its own students. If a school's students need a supplemental program at a more intense level, the school and district must demonstrate those needs to the Commissioner. Once the need for more intensive programs has been demonstrated, the Commissioner must authorize those programs and provide all of the funding necessary to implement them.

Abbott recognizes that the particularized needs of students might well require more intensity than the minimum programs offer. For example, the Court ordered that there must be an "effective and realistic opportunity" for schools to provide more intensive social and health services, beyond coordination and referral. If students in a given middle or high school need social and health services to be located on-site, the school and district must demonstrate the need for on-site services to the Commissioner. The Commissioner, in turn, must approve the program and provide adequate funding for the school to implement the needed services.

10. Does Abbott require additional supplemental programs, if needed?

Yes. The Supreme Court requires Abbott middle and high schools and districts to provide needed supplemental programs in addition to those specific programs recommended by the Commissioner. Here again, if students in a given school need a particular program not included in the minimum package mandated for all schools under Abbott, the school and district must demonstrate the need for the additional program to the Commissioner, who then must "obtain the funds necessary" to implement the program.

In particular, the Supreme Court recognized the merits of three additional supplemental programs -- summer school, after-school and extra nutrition programs. If a middle or high school decides its students need these or other additional programs, the school and district must provide them, with adequate funding from the Commissioner.

11. How should Abbott middle and high schools decide whether to offer the minimum supplemental programs or more?

Each Abbott middle and high school and district must thoroughly assess the particularized needs of their actual students in order to identify and design programs most appropriate for them, and to decide whether the minimum programs recommended by the Commissioner are enough. Only with comprehensive information about their students can districts make the "fact-sensitive and complex" determination of "the special needs of at-risk children and the programs necessary to meet those needs."

12. Does Abbott require the State to fund all needed supplemental programs?

Yes. The State must fully fund all supplemental programs that an Abbott middle or high school and district demonstrate are needed for their students. This means that schools and districts are no longer limited to current funding levels.

13. Does Abbott require schools to reallocate funds and staff from existing programs, to needed supplemental programs?

No. The Supreme Court prohibits any rollback of regular education or needed supplemental programs. Of course, each school and district must carefully review all existing programs to make sure they are effective. However, a school and district cannot reallocate funds away from any existing, effective programs. The Court states that "funds may not be withdrawn from or reallocated within the whole-school budget if that will undermine or weaken either the school's foundational education program or already existing supplemental programs."

Further, it would be entirely inconsistent with Abbott for schools or districts merely to designate existing employees as required supplemental program staff, who also retain their current responsibilities. Supplemental programs and positions -- such as the community services coordinator for social and health service that every school must have – are required by the Court precisely because existing programs and staff are not adequate to meet Abbott students' need. These inadequacies are not addressed by changes in position titles. Withholding the resources, including staff, to implement needed supplemental programs fully, is a violation of Abbott.

14. What happens when a district requests extra funding?

Under Abbott, the Commissioner can review a request for extra funding from an Abbott district for needed supplemental programs. The Commissioner's review of these requests is very limited. The Commissioner must defer to the decisions of Abbott schools and districts because "local educators are in the best position to know the particularized needs of their own students." Once a school and district demonstrate the need for extra funding, the Commissioner's job is to provide the funding.

15. Can a district appeal if the Commissioner denies its request?

Yes. The Supreme Court anticipates that disputes may arise between the Commissioner and the Abbott districts in implementing supplemental programs. These disputes "will involve issues arising from the implementation, extension, or modification of existing programs, the allocation of budgeted funds, [and] the need for additional funding ...."

The Supreme Court has designated these Abbott disputes as "controversies" under the School Laws. The district must, first, file an appeal with the Commissioner and seek to have the dispute resolved by an Administrative Law Judge. The Law Judge would conduct a hearing in which the Commissioner would be required to defend his decision to override

the needs-based decisions of Abbott school officials. A decision can then be appealed directly to the Appellate Division and then to the Supreme Court. As the Court states, "[i]n this way, districts and individual schools will be accorded full administrative and judicial protection in seeking the demonstrably-needed programs, facilities, and funding necessary to provide the level of education required by ... the Constitution."

16. Can the Supreme Court be asked to intervene directly to resolve disputes?

Education Law Center will continue to make every effort to work closely with State officials to help them to anticipate and solve problems with implementation of Abbott facilities improvements. ELC, on behalf of the Abbott students, can utilize a procedure – a Motion in Aid to Litigants' Rights – to ask the Supreme Court to address disputes over State policies that cannot be resolved through administrative or legislative action. According to the Court, "[t]he lessons of the history of the struggle to bring these children a thorough and efficient education render it essential that their interests remain prominent, paramount, and fully protected."

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Other ELC Abbott Opinions Available

#1 - Early Childhood Education
#2 - Facilities
#3 - Supplemental Programs and Whole School Reform in Elementary Schools

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★**Education Law Center** celebrates its 25th Anniversary by launching a Website. This new site makes information quickly available to students, parents, teachers, school administrators and others concerned with the education of poor children and children with disabilities who attend New Jersey's public schools.

★**PSE&G partners with ELC to produce Abbott Parent and Community Guides.** ELC is very grateful to PSE&G for the design, production and printing of its new pamphlets designed as part of our *Abbott Schools Initiative* to help parents and community leaders better understand Abbott. The first two Guides - Preschool and Kindergarten and Safe and Adequate School Buildings will be available in early December from ELC.

★**The *Abbott Schools Initiative* has been conducting Parent Training Workshops on Parent Rights under Abbott.** Workshops have been held in: Camden, Irvington, Jersey City, Newark, Paterson and Trenton. For further information, or to request a workshop, please contact Wilbur Haddock, Parent and Community Liaison, at (973) 624-1815 ext. 15.

SAVE THE DATE: ELC will celebrate its 25th Anniversary with a Benefit Concert on April 6, 1999 at New Jersey Performing Arts Center's Victoria Theater. Scheduled performances by The Jazz Institute of New Jersey's Youth Ensemble, New Jersey Tap Ensemble and Return to the Source. Special guest appearances expected. Watch for further information on sponsorship opportunities and ticket sales.

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★**Serving New Jersey School Children for 25 years.**

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ABBOTT OPINION # 5

PLANNING PROGRAMS AND BUDGETS IN ABBOTT SCHOOLS

We have prepared this Opinion to help clarify the Supreme Court's specific rulings in Abbott v. Burke. This Opinion discusses the requirements for planning programs and budgets in Abbott schools. It is designed to assist district administrators, teachers, parents, community organizations and others involved in school-based planning of curriculum, supplemental programs and budgets under Abbott. This Opinion is not the actual Supreme Court rulings, but reflects our thorough reading and careful analysis of those rulings. For this Opinion, we have reviewed:

- The Supreme Court's opinions in Abbott v. Burke, particularly Abbott V, 153 N.J. 480 (1998), and Abbott IV, 149 N.J. 119 (1997);
- Report and Decision of the Remand Court (Judge Michael Patrick King), Appendix I to Abbott V, 153 N.J. 480, 529 (Jan. 22, 1998);
- Recommendations for Resolving New Jersey Abbott v. Burke IV, after the November and December 1997 Hearings, Allan Odden, Appendix II to Abbott V, 153 N.J. 480, 637 (Dec. 30, 1997);
- A Study of Supplemental Programs and Recommendations for the Abbott Districts, New Jersey State Department of Education (November 1997); and
- Abbott Regulations, N.J.A.C. 6:19A-1.1 - 6.5.

QUESTIONS ADDRESSED

1. What is a "thorough and efficient education" for Abbott students?
2. What programs must be provided in all Abbott schools?
3. Are schools and districts responsible for planning and budgeting these programs?
4. Why is school-based management under Abbott unique?
5. How does a school plan its programs and budget under Abbott?
6. What is the district's role in school-based management?
7. How does a school assess student need and evaluate programs?
8. Can program plans and budgets be changed after they have been submitted?
9. What programs must be included in school-based plans?
10. What happens to existing programs?
11. Does the SMT decide what staff and other resources are needed?
12. What funding is currently available?
13. Is current funding sufficient to support the Abbott educational program?
14. Must the State fill any school budget gap with additional funding?
15. Are schools required to reassign staff and to reallocate funds?
16. Are schools required to reduce special education programs?
17. How do SMTs support a request for extra funding?
18. What happens when a school requests extra funding?
19. Can a district appeal if the Commissioner denies the request?
20. Can the Supreme Court be asked to intervene directly to resolve disputes?
1. What is a "thorough and efficient education" for Abbott students?

The New Jersey Constitution requires that every child receive a "thorough and efficient" education. For students in poorer urban (Abbott or Special Needs) districts, the Supreme Court defines this education as one that will prepare them to compete effectively in the economy and become active citizens in their communities.

2. What programs must be provided in all Abbott schools?

The Supreme Court requires that every Abbott school -- elementary, middle and high schools – provide an education that has two program components:

A. Rigorous standards-based education

Each Abbott school must offer rigorous curriculum and instruction so that students can achieve the New Jersey core curriculum content standards ("standards") in all subject areas, and acquire important life and learning skills. This "standards-based education" must be modeled after the high quality programs offered in successful suburban schools. Abbott standards-based education is also called "regular education" or the "foundational education program."

B. Supplemental programs

Abbott schools must also offer extra or additional programs to help their students overcome the extreme disadvantages of growing up in poverty. These programs are commonly called "supplemental programs." Under Abbott, supplemental programs are "a fundamental prerequisite" to give all students "a fair chance" for academic success.

3. Are schools and districts responsible for planning and budgeting these programs?

Yes. The Supreme Court accepted the Commissioner of Education's recommendation that Abbott schools be managed by a school management team (SMT) comprised of teachers, principal and parents. This process is called "school-based management." Each district has a policy on SMT selection and composition.

The SMT must make sure that its school has all the regular and supplemental programs required by the content standards, the Abbott rulings, and the particular academic, social and health needs of students. SMTs are, therefore, empowered and entrusted to carry out critical constitutional duties under Abbott.

4. Why is school-based management under Abbott unique?

A number of urban school districts, such as Chicago, use school-based management as one way of improving academic performance. SMTs in these districts try to provide educational programs within severe budget constraints. These SMTs have a difficult job because the pre-set budgets are usually insufficient to support all of the educational programs needed by the students.

In contrast, school-based management under Abbott is driven by the program needs of the school's students. Abbott SMTs first plan how the school will provide all of its students with the Abbott educational program -- rigorous standards-based education and all required supplemental programs. Only then, and without regard to any pre-set funding level, does the SMT prepare a school budget. If current funds cannot support the school's program, the SMT and the district must file a request for more state funds with the Commissioner who, in turn, must provide the extra funds.

5. How does a school plan its programs and budget under Abbott?

The process of school-based planning under Abbott involves eight critical steps. Each SMT must:

Step 1	Assess the students' academic, social, and health needs.
Step 2	Plan a rigorous standards-based education program in all the subject areas covered by the standards for all students, including students with disabilities and limited English proficiency. Program planning must also be consistent with the whole school reform model, in those schools that have adopted a model.
Step 3	Plan all required supplemental programs: minimum programs plus needs-based programs.
Step 4	Evaluate current standards-based education and supplemental programs and determine whether each program should be continued, improved or eliminated.
Step 5	Prepare a budget for the total school-based plan including the costs for all programs, support services and administration.
Step 6	Identify and total all currently available funding, including funds for any current program expenditures that will be reallocated under the new school-based plan.
Step 7	Determine whether such funding can successfully provide all required and needed programs, or whether additional funds are necessary.
Step 8	Submit plan, budget, and particularized needs assessment data to the Commissioner if additional funds are required to implement the full plan.

6. What is the district's role in school-based management?

Schools and districts jointly share responsibility for school-based management. Districts should support the SMTs through training and technical assistance in needs assessment and program design, evaluation, budgeting and management. Districts must review the school-based plans and budgets and, with the SMT, seek extra funding from the Commissioner, if needed. Finally, districts should monitor and coordinate the schools' programs and practices to ensure program quality, compliance with Abbott, and parity across all schools in the district.

7. How does a school assess student need and evaluate programs?

School-based program plans and budgets must be driven by the academic, social and health needs of students. Further, existing programs must be evaluated on an ongoing basis. These tasks require SMTs to develop the capability to use proven research and evaluation methods. Schools may currently lack this capability. It is critical, therefore, for SMTs to seek technical assistance and training from their district, and from expert consultants and/or higher education. Funds to support these assessment activities can be included in the school-based budget.

8. Can program plans and budgets be changed?

Yes. As SMTs learn more about needs and programs through experience, research and evaluation, they should amend and modify plans and budgets on an ongoing basis. This is particularly important because some of the deadlines imposed by the Department of Education (DOE) give SMTs little initial opportunity to assess student need and to make careful decisions about programs and budgets. School-based plans should be living documents, and evolve over time in order to fully respond to student need and to assure effective implementation of Abbott.

9. What programs must be included in school-based plans?

Every Abbott school must provide (1) rigorous standards-based education in all subjects covered by the New Jersey standards; (2) the minimum supplemental programs required by the Court for the school's grade levels; and (2) all other supplemental programs that a school's students need. For more detail about these requirements, see ***Abbott Opinions #3 and 4*** on supplemental programs and whole school reform in Abbott schools, available from ELC.

10. What happens to existing programs?

SMTs must evaluate whether existing programs are effective, have a research basis and are consistent with the new school-based plan. Based on these factors, the SMT can decide which existing programs should be kept, which require improvement, and which, if any, should be replaced by new programs.

11. Does the SMT decide what staff and other resources are needed?

Yes. SMTs must plan for all the resources necessary for the successful implementation of these programs and for the school as a whole. Plans and budgets must include enough resources -- for example, general and specialized teachers, supervisors, materials, equipment, and support services -- to offer the Abbott school-based program to every student, including students with disabilities and students with limited English proficiency.

12. What funding is currently available?

As part of "school-based budgeting," SMTs must review all available funds to determine whether there is enough funds on-hand to meet total program needs or whether extra funding is needed from the Commissioner. Abbott schools currently receive funding from the following sources:

A. Parity-level funding

A 1997 Supreme Court order required the State to increase funding for regular education in the Abbott districts to an amount equal to spending in successful suburban schools. This is commonly called funding "at parity." Parity-level funding is currently available to each school to support rigorous standards-based education in all subjects. In 1998-99, the per-pupil amount of funding at parity is $8100 for elementary schools, $8897 for middle schools, and $9787 for high schools. Abbott mandates that funding for standards-based education at parity continue indefinitely.

B. DEPA funding

The State currently provides Abbott districts with separate funding for supplemental programs, called Demonstrably Effective Program Aid (DEPA). In 1998-99, the Abbott districts received a total of approximately $100 million in DEPA funds. Each district's portion is determined by the number of poor students in the district.

C. ECPA funding

The State provides Early Childhood Program Aid (ECPA) for kindergarten and preschool programs. In 1998-99, ECPA aid to the Abbott districts totaled $200 million.

D. Title I funding

Abbott schools receive federal Title I funds for programs such as after-school and parent training. Funding for each school is based on the number of low-income students it serves.

E. Special education funding

In 1998-99, Abbott districts receive a total of $635,138,032 in state aid for special education programs.

F. Bilingual education funding

In 1997-98, Abbott districts received a total of $57,428,144 for bilingual education programs.

13. Is current funding sufficient to support the Abbott educational program?

Probably not. In Spring 1998, the Commissioner stated to the Supreme Court that current funding would be sufficient to support both a rigorous standards-based education and all supplemental programs in every Abbott school. This representation was not based on any actual school program or budget, but rather on "illustrative school budgets" created by DOE.

The Commissioner's "illustrative budgets" were sharply criticized on several counts. First, these budgets did not contain sufficient specialized teachers to provide standards-based instruction in all subject areas at all grade levels. Second, the budgets assumed that, through "neverstreaming," virtually no students with disabilities would need specialized instruction in self-contained classrooms, in resource rooms, or in the regular classroom with supports. Finally, the budgets assumed that some existing staff positions – assistant principals, guidance counselors, etc. – could simply be reassigned to fill positions in new supplemental programs.

Faced with this critique, the Supreme Court accepted the illustrative budgets only as minimums, and did not rule whether current levels of funding were adequate to support the entire Abbott program. Instead, the Court gives the Abbott schools and districts -- and not the DOE -- the responsibility to decide if current funding is sufficient to provide both standards-based education and all supplemental programs.

14. Must the State fill any school budget gap with additional funding?

Yes. The Commissioner represented that the State would fill in any gaps between current and needed funding in school-based budgets. The Supreme Court accepted this representation as a "clear commitment that if a school has a need for additional funds, the needed funds will be provided and secured" by the Commissioner.

The Court also ruled that "adequate funding" remains "critical" to providing a thorough and efficient education in Abbott schools. The Court emphasizes that the Abbott schools must have sufficient funding to provide the full Abbott program. For example, if schools do not have enough current funding for art, music, special education, science, reading or other programs, the Commissioner "shall ... ensure the funding and resources necessary for their implementation."

15. Are schools required to reassign staff and to reallocate funds?

No. The Supreme Court prohibits any rollback of standards-based education or required and needed supplemental programs. Of course, SMTs must carefully review all existing programs to make sure they are effective, respond to the needs of students, and are appropriate components of the new overall school-based plan. They may then

determine that some program expenditures or staff assignments are no longer necessary, and instead, should be redeployed.

However, a school cannot reassign staff or reallocate funds from any existing, effective program. The Court states that "funds may not be withdrawn from or reallocated within the whole school budget if that will undermine or weaken either the school's foundational education [standards-based education] program or already existing supplemental programs."

Schools also cannot just designate existing staff to fill positions in new supplemental programs, while retaining current duties. Abbott requires supplemental programs and positions – such community services coordinators for social and health services – precisely because existing programs and staff cannot meet the needs of Abbott students. These are not addressed by simply adding or changing staff titles. SMTs are required to make their program decisions based upon the Abbott program requirements and a thorough assessment of student need.

16. Are schools required to reduce special education programs?

No. As discussed in Question 14, the Supreme Court did not accept the Commissioner's proposal for drastically reducing special education through "neverstreaming." Instead, the Court ruled that effective special education programs cannot be reduced or eliminated. In fact, the Court ruled that "in schools where neverstreaming does not or will not work, additional funds may be required to implement traditional special education services, including the hiring of teachers trained in special education and the provision of specially designed or equipped rooms." Once again, Abbott schools and districts have the responsibility to make sure that the needs of students with disabilities are fully met. Also, for the first time, Abbott schools can now obtain more state funds for special education programs, if needed.

17. How do SMTs support a request for extra funding?

Abbott requires the Commissioner to provide additional funding for programs to meet student needs. It is therefore critical for SMTs to evaluate educational research and carefully assess student needs and programs. Student needs and proven research, and not pre-set budgets, are the anchor for school-based plans. SMTs should begin gathering this information immediately. For example, research on the effectiveness of after-school programs would support starting such a program, while information on the impact of the program would support expansion in future years.

It is important to note that a school does not have to prove that test scores will immediately rise in order to justify a request for a supplemental program. Under Abbott, "[t]he fact that the educational dividends [of a supplemental program] may not be immediately apparent or easily measurable does not render them in any sense ancillary to the achievement of a thorough and efficient education."

18. What happens when a school requests extra funding?

Under Abbott, the Commissioner reviews requests for extra funding from Abbott schools and districts. However, the Commissioner's review of these requests is very limited. The Commissioner must defer to school-based decisions because "local educators are in the best position to know the particularized needs of their own students." Once a school and district demonstrate the need for extra funding, the Commissioner's job is to provide it.

19. Can a district challenge the Commissioner's decision?

Yes. The Supreme Court anticipates that disputes may arise between the Commissioner and the Abbott schools and districts in implementing supplemental programs. These disputes "will involve issues arising from the implementation, extension, or modification of existing programs, the allocation of budgeted funds, [and] the need for additional funding ...."

Districts can challenge a initial decision by the Commissioner to deny a request for extra funding by filing an administrative petition. Districts can also challenge a final decision by the Commissioner in the appellate court and then to the Supreme Court. As the Court states, "[i]n this way, districts and individual schools will be accorded full administrative and judicial protection in seeking the demonstrably-needed programs, facilities, and funding necessary to provide the level of education required by ... the Constitution."

20. Can the students be heard in Abbott disputes?

Yes. The Education Law Center will continue to represent the 300,000 students and preschool children to enforce their constitutional rights under Abbott. The Supreme Court recognizes that "[t]he lessons of the history of the struggle to bring these children a thorough and efficient education render it essential that their interests remain prominent, paramount, and fully protected." ELC urges parents, relatives, caretakers, community leaders and concerned citizens to contact us if you have a complaint or concern about the Abbott programs.

Abbott Opinions are written and distributed by Education Law Center on specific issues pertaining to Abbott v. Burke. This Opinion is part of ELC's on-going effort to assure effective and full implementation of the remedies ordered by the Supreme Court.

Other ELC *Abbott* Opinions
(available from ELC)

#1 -- Early Childhood Education
#2 -- Facilities
#3 – Supplemental Programs
and Whole School Reform
in Elementary Schools
$4 – Supplemental Programs
in Middle and High Schools

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